Supreme Court, U.S.
FILED

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In the Supreme Court of the United States

EAST FORD, INC.,

Petitioner,

v.

JAMES E. TAYLOR, JR.

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF MISSISSIPPI

PETITION FOR WRIT OF CERTIORARI

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49 pp

QUESTION PRESENTED

Whether the Mississippi Supreme Court's refusal to enforce an arbitration agreement as procedurally unconscionable based on court created conspicuousness requirements not imposed on ordinary contract provisions is preempted by Section 2 of the Federal Arbitration Act (9 U. S. C. §2) as interpreted by this Court in *Doctor's Associates v. Casarotto*, 517 U. S. 681, 116 S. Ct. 1652, 134 L. Ed. 2d 902 (1996).

PARTIES TO THE PROCEEDING

Petitioner

Petitioner East Ford, Inc. is not a publicly traded company. There are no publicly held companies that own 10% or more of the petitioner's stock. Petitioner East Ford was the Defendant in the Circuit Court, and the Appellant before the Supreme Court of Mississippi.

Respondent

Respondent is James E. Taylor, Jr., an individual citizen of the United States, residing in Hinds County, Mississippi. James E. Taylor, Jr. was the Plaintiff in the Circuit Court and the Appellee in the Supreme Court of Mississippi.

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Petitioner respectfully petitions for a Writ of Certiorari to review the judgment of the Supreme Court of Mississippi invalidating an agreement to arbitrate controlled by the Federal Arbitration Act.

OPINIONS BELOW

The Mississippi Supreme Court opinion is reported at 826 So.2d 709 (Miss. 2002), rehearing denied (Oct. 3, 2002).

STATEMENT OF JURISDICTION

The judgment of the Supreme Court of Mississippi finding an agreement to arbitrate falling under the Federal Arbitration Act to be procedurally unconscionable was entered on July 18, 2002. The Mississippi Supreme Court entered an order denying a timely petition for rehearing *en banc* on October 3, 2002 (App. A at 1a).

The jurisdiction of this Court is invoked pursuant to 28 USC §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the following statutory provision:

9 U.S.C. §2

9 U.S.C. §2 provides:

> Validity, irrevocability, and enforcement of agreements to arbitrate. A written provision in any maritime transaction or a contract evidencing a transaction involving commerce

> to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, or transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist in law or in equity for the revocation of any contract.

STATEMENT OF THE CASE

This case arises from the refusal of the Mississippi Supreme Court to enforce an agreement of the parties to arbitrate their disputes based on the alleged lack of conspicuousness of the arbitration agreement. On May 10, 1999, Mr. Taylor signed an Offer to Purchase or Lease Vehicle from East Ford (hereinafter "Offer"). The Arbitration Agreement appears in a box on the front of the Offer which is surrounded by a black line and occupies approximately 30% of the page. The words "Arbitration Agreement" appear in all capital letters and Mr. Taylor signed inside the box below the Arbitration Agreement. Mr. Taylor admits voluntarily signing the Agreement immediately below the statement: "Do not sign if you have any questions or objections."

When a dispute arose between the parties, Mr. Taylor ignored the agreement to arbitrate and filed an action in the Circuit Court of the First Judicial District of Hinds County, Mississippi. East Ford responded with a Motion to Compel Arbitration under the Agreement. The trial court found that the Federal Arbitration Act applied, and that Plaintiff's claims fell within the scope of the arbitration agreement; however,

emphasizing differences in the size of the type on the Offer, it ruled that the agreement to arbitrate was procedurally unconscionable. On appeal, the Mississippi Supreme Court affirmed, based on the size and appearance of the print inside the box and the apparent lack of special notice of the inclusion of the arbitration agreement. In essence, the Mississippi Supreme Court required the arbitration agreement to meet certain subjective conspicuousness requirements not applied to normal contract provisions. In so doing, the Court ignored this Court's ruling in *Doctor's Associates, Inc. v. Casarotto*, 517 U.S. 681, 681 (1996), and its ruling conflicts with the Federal Arbitration Act.

REASONS FOR GRANTING THE PETITION

I. THE MISSISSIPPI SUPREME COURT HAS IMPOSED SPECIAL REQUIREMENTS ON ARBITRATION AGREEMENTS NOT IMPOSED ON ORDINARY CONTRACT CLAUSES.

The operative facts in the present case are undisputed, and the case presents a pure question of law. Factually, Mr. Taylor is an adult with three semesters of college who executed the arbitration agreement, and all other agreements necessary to purchase a vehicle, without reading any of the documents. He does not contend that he was mislead or fraudulently induced to execute the agreements; rather, he declares that he saw no need to read the documents, and that no one directed him specifically to the arbitration agreement on the face of the Offer. The arbitration agreement appears on the front page of the Offer approximately 1 1/4 inch above

Mr. Taylor's signature,[1] and is titled "B. ARBITRATION AGREEMENT:" in all capital letters. The arbitration agreement occupies approximately one-half of the box inside which Mr. Taylor signed his name.

These facts presented questions of law to the Mississippi Supreme Court. Initially, the Mississippi Supreme Court found that the FAA applies to the agreement. While it inferred some criticism of some of the terms, the Court did not find any specific provision of the arbitration agreement to be illegal under Mississippi contract law, and it never concluded that the arbitration agreement was substantively unconscionable. Rather, the Court focused on the relative size of the type and other factors that related to the perceived lack of conspicuousness of the arbitration agreement, along with the ordinary aspects of consumer transactions,[2] as the sole basis for its ruling. This conclusion is reflected in the Court's concluding remarks in its opinion:

> As previously stated, the circuit court found in the present case that the arbitration provision appears less than one-third the size of many other terms in the document, appears in very

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[1] A copy of the Offer to Purchase of Lease Vehicle containing the Arbitration Agreement is attached to this petition as Appendix "D".

[2] The court referred to the fact that East Ford, Inc. is a business and the Respondent is a consumer, together with the fact that the agreement is on a preprinted form. While it ultimately deemed the contract to be one of adhesion, there is no proof recited in the record that the Respondent lacked any meaningful choice. In fact, there are multiple Ford dealerships within a 15 mile radius of East Ford, all of which are close to interstate highways.

> fine print and regular type font. The circuit court further observed that all of the details concerning the vehicle Taylor purchased are in boldface print, while the arbitration provision is not. Additionally, the arbitration provision is preprinted on the document. Taking all of the foregoing into consideration, we find the arbitration clause in this case is procedurally unconscionable.

East Ford, Inc. v. James E. Taylor, Jr., 826 So. 2d 709, 716-17 (Miss. 2002).

These criticisms of the size and appearance of the print are not a basis for invalidating ordinary contract provisions under Mississippi law. In fact, the Mississippi case law does not impose such requirements on various "extraordinary" contract clauses. Dragnet clauses in property owner's agreements with lenders are an example. Such clauses are valid and binding if "properly executed and stated in clear and unambiguous language." *Iuka Guaranty Bank v. Beard,* 658 So.2d 1367, 1371 (Miss. 1995); *Merchants Nat'l Bank v. Stewart,* 608 So.2d 1120, 1126 (Miss.1992); *Trapp for Use and Benefit of First Mississippi Bank*, 418 So.2d 786, 792 (Miss. 1982); *Newton County Bank, Louin Branch Office v. Jones*, 299 So.2d 215 (Miss.1974). No requirement for identical type throughout the security agreement, or for some special notice, is required to make such Draconian clauses enforceable.

The opinion in the instant case also totally disregards an established rule of Mississippi contract law. Under this rule, absent misrepresentation to induce the unwitting agreement to contract terms, a party who signs a contract without first reading it cannot contest the terms of the

contract. *Alliance Trust Co. v. Armstrong*, 185 Miss. 148, 186 So. 633, 635 (1939) (to allow a party to admit that he signed a contract and allow him to deny it expresses his agreement would destroy the value of all contracts).

The sole exception to this longstanding rule from *Alliance Trust Co.* was announced by the Mississippi Supreme Court in *Godfrey, Bassett & Kuykendall Architects, Ltd. v. Huntington Lumber & Supply Company, Inc.*, 584 So.2d 1254 (Miss. 1991). *Godfrey* involved an admitted innocent misrepresentation that induced a party to sign an agreement he otherwise would not have signed. Subject to this one exception, which is not involved in the instant case, the Mississippi contract law holds a party to the terms of an agreement he executes without reading. *E.g., Wells v. Shelter General Insurance Company,* 2002 WL 1821325 (S.D. Miss. 2002); *Howard v. Citifinancial, Inc.*, 195 F.Supp.2d 811 (S.D. Miss. 2002); *Dunn v. Dunn*, 786 So.2d 1045 (Miss. 2001); *Hicks v. Bridges,* 580 So.2d 743 (Miss. 1991); *Busching v. Griffin,* 542 So.2d 860 (Miss.1989); *Ivy v. Grenada Bank,* 401 So.2d 1302 (Miss. 1981); *Jones v. McGahey,* 187 So.2d 579 (Miss.1966); *McCubbins v. Morgan*, 23 So.2d 926 (Miss. 1945); *Martin v. Fly Timber Company, Inc.* 2002 WL 982609 (Miss. App. 2002); *Estate of Baxter v. Shaw Associates, Inc.*, 797 So.2d 396 (Miss. App. 2001); *Continental Jewelry Co. v. Joseph*, 140 Miss. 582, 105 So. 639 (1925); *Gunter v. Henderson Molpus Co.*, 149 Miss. 603, 115 So. 720 (1928); *Fornea v. Goodyear Yellow Pine Co.*, 181 Miss. 50, 178 So. 914 (1938); *Alliance Trust Co. v. Armstrong,* 185 Miss. 148, 186 So. 633 (1939).

Under these cases and the general Mississippi contract law, the federal courts applying Mississippi law have consistently rejected attacks on arbitration clauses as procedurally unconscionable. *See, First Family Financial*

Services, Inc., v. Sanford, 203 F. Supp. 2d 662 (N.D. Miss. 2002); *Pridgen v. Greentree Financial Servicing Corp.*, 88 F. Supp. 2d 655 (S.D. Miss. 2000); *Raesly v. Grand Housing, Inc.*, 105 F. Supp. 2d 562 (S.D. Miss. 2000). The opinion in the instant case is best explained by the Mississippi Supreme Court's general hostility towards arbitration.[3]

Under the case presently before the Court, arbitration clauses in Mississippi are not the beneficiary of general rules of contract law imposing a duty on a party to read contracts he signs, and any arbitration agreement must pass a conspicuousness test which is not applied to other ordinary contract clauses under the common law of the state. This Court's opinions do not allow the application of such a special body of law to arbitration agreements under the FAA.

II. THIS COURT'S OPINIONS, INCLUDING *DOCTOR'S ASSOCIATES, INC. v. CASAROTTO*, PROHIBIT THE JUDICIAL IMPOSITION OF SPECIAL REQUIREMENTS ON ARBITRATION AGREEMENTS NOT IMPOSED ON ORDINARY CONTRACTS.

There is no question that states often impose special conspicuousness requirements on contract provisions that are considered to be particularly heavy handed or subject to abuse. The Uniform Commercial Code requirement of

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[3] Such hostility is also reflected in *Parkerson v. Smith*, 817 So.2d 529 (Miss. 2002) where the Mississippi Supreme Court concluded that the Magnuson-Moss Act preempted the FAA. This ruling is in clear conflict with the Fifth Circuit Court of Appeals opinion in *Walton v. Rose Mobile Homes*, LLC, 298 F.3d 470, 478 n. 16 (5th Cir. 2002).

conspicuousness of warranty disclaimers in § 2-316 is an example. Such requirements are not, however, imposed on ordinary contracts and contract provisions. A number of states have attempted to impose similar notice or conspicuousness requirements on arbitration agreements through legislation, and this Court has struck these legislative enactments down under the Federal Arbitration Act. In so doing, the Court has clearly announced that a state court cannot do by case law that which it has refused to allow through legislation. In both cases, the power to refuse to enforce an arbitration agreement is limited to a determination that the arbitration agreement *is invalid under the ordinary contract* law of the state. *E.g., Doctor's Associates, Inc.* v. *Casarotto,* 517 U.S. 681,116 S.Ct. 1652 (1996)(emphasis added).

"The Federal Arbitration Act (FAA) declares written provisions for arbitration 'valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.'" *Doctor's Associates, Inc. v. Casarotto*, 517 U.S. 681, 681 (1996). *Doctor's Associates* struck down a legislative enactment imposing special notice requirements, but anticipating cases such as the present one, the Court twice reiterated that the state courts were equally prohibited from imposing special common law requirements on the validity of arbitration agreements:

> In *Perry*, we reiterated: "[S]tate law, whether of legislative or judicial origin, is applicable if *that law arose to govern issues concerning the validity, revocability, and enforceability of contracts generally. A state-law principle that takes its meaning precisely from the fact that a contract to arbitrate is at issue does not*

> *comport with [the text of § 2]." 482 U.S., at 492, n. 9, 107 S.Ct., at 2527, n. 9.*

Doctor's Associates, Inc. v. Casarotto, 517 U.S. 681, 685 (1996). Later in the opinion the Court stated this proposition again:

> It bears reiteration, however, that a court may not "rely on the uniqueness of an agreement to arbitrate as a basis for a state-law holding that enforcement would be unconscionable, for this would enable the court to effect what ... the state legislature cannot." *Perry v. Thomas*, 482 U.S. 483, 492, n. 9, 107 S.Ct. 2520, 2527, n. 9, 96 L.Ed.2d 426 (1987).

Id. at 687.

As the Court has stated, §2 of the FAA **"Congress precluded States from singling out arbitration provisions for suspect status, requiring instead that such provisions be placed 'upon the same footing as other contracts.'"** *Id.* at 687 (emphasis added).

The ruling of the Mississippi Supreme Court in the instant case simply disregards the strong warning in *Doctor's Associates* and gives arbitration agreements a suspect status not imposed on much more potentially burdensome clauses under Mississippi law.[4] It imposes *de facto* conspicuousness

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[4] While it went to some pains to point out that a forum selection clause on the second page of a contract was the same type size, no implied notice condition was imposed on such a clause by the court in *Tel-com Management, Inc. v. Waveland Resort Inns,*

requirements on arbitration agreements which are not commonly imposed on ordinary contract provisions under Mississippi law. These requirements are similar to the special notice requirements adopted by state legislatures which this Court has declared unlawful and should not be allowed to stand under the federal law.

II. THE QUESTION PRESENTED IS OF MAJOR IMPORTANCE.

The FAA was designed to overrule the judiciary's long standing refusal to enforce agreements to arbitrate. "Arbitration agreements are purely matters of contract, and the effect of the bill is simply to make the contracting party live up to his agreement . . . An Arbitration agreement is placed upon the same footing as other contracts, where it belongs." H. R. Rep. No. 96, 68th Cong. 1st Session F 1924).

Although opponents of arbitration attempt to portray it as a villainous procedure, in fact the opposite is true. This Court has acknowledged the many benefits arbitration confers on consumers:

> We agree that Congress, when enacting this law had the needs of consumers, as well as others in mind . . . Indeed, arbitrations advantages often would seem helpful to individuals . . . complaining about a product,

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Inc, 782 So.2d 149, 153 (Miss. 2001)(forum selection clause was in same type but did not include a separate heading entitled "Forum Selection Clause" as did the arbitration agreement on the front page of the Offer. Neither this nor any other Mississippi case imposes a uniform type size requirement on contracts.)

> who need a less expensive alternative to litigation.

Allied-Bruce Terminix Cos., Inc. v. Dobson, 513 U.S. 265, 280 (1995) (citations omitted.)

CONCLUSION

For these reasons, East Ford, Inc. respectfully submits that the petition for a Writ of Certiorari should be granted because the Mississippi Supreme Court has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Respectfully submitted,

C. MICHAEL ELLINGBURG
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APPENDIX A

SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF
THE STATE OF MISSISSIPPI
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This is to advise you that the Mississippi Supreme Court rendered the following decision on the 3rd day of October, 2002.

Supreme Court Case # 2000-IA-01527-SCT
Trial Court Case # 251-00278CIV

East Ford, Inc. v. James E. Taylor, Jr.

The motion for rehearing filed by appellant is denied. Graves, J., not participating.

*** NOTICE TO CHANCERY/CIRCUIT/COUNTY COURT CLERKS ***

If an original of any exhibit other than photos was sent to the Supreme Court Clerk and should now be returned to you, please advise this office in writing immediately.

APPENDIX B

SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF
THE STATE OF MISSISSIPPI
Office of the Clerk

July 18, 2002

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This is to advise you that the Mississippi Supreme Court rendered the following decision on the 18th day of July, 2002.

Supreme Court Case # 2000-IA-01527-SCT
Trial Court Case # 251-00278CIV

East Ford, Inc. v. James E. Taylor, Jr.

Affirmed and Remanded. Affirmed and Remanded. Appellant taxed with costs of appeal.

*** NOTICE TO CHANCERY/CIRCUIT/COUNTY COURT CLERKS ***

If an original of any exhibit other than photos was sent to the Supreme Court Clerk and should now be returned to you, please advise this office in writing immediately.

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2000-IA-01527-SCT

[August 24, 2000]

EAST FORD, INC.	)
	)
v.	)
	)
JAMES E. TAYLOR, JR.	)
	)

DATE OF JUDGMENT: 8/24/2000

TRIAL JUDGE: HON. JAMES E. GRAVES, JR.

COURT FROM WHICH APPEALED: HINDS COUNTY CIRCUIT COURT.

ATTORNEYS FOR APPELLANT: BRENDA B. BETHANY C. MICHAEL ELLINGBURG.

ATTORNEYS FOR APPELLEE: WILLIAM LISTON III, BARRY BRIDGFORTH.

NATURE OF THE CASE: CIVIL - CONTRACT

DISPOSITION: AFFIRMED AND REMANDED - 7/18/2002

JUDGES:
SMITH, PRESIDING JUSTICE. PITTMAN, C.J., WALLER, COBB AND CARLSON, JJ., CONCUR. EASLEY, J., CONCURS IN RESULT ONLY. DIAZ, J.,

CONCURS IN PART. McRAE, P.J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY DIAZ, J. GRAVES, J., NOT PARTICIPATING.

OPINION

EN BANC.

SMITH, PRESIDING JUSTICE, FOR THE COURT:

East Ford, Inc. appeals to this Court from an adverse ruling in favor of James E. Taylor, Jr., by the Hinds County Circuit Court. Taylor filed suit in the Hinds County Circuit Court against East Ford, Inc. on March 15, 2000, alleging that it had sold him a used truck, which was represented to him as new. Taylor signed an "Offer to Purchase or Lease Vehicle" on the date of the sale which contained an arbitration clause. After Taylor filed suit, East Ford filed a Motion to Compel Arbitration. The circuit court ultimately found the arbitration agreement to be unconscionable. This Court subsequently granted permission for this interlocutory appeal. *See* M.R.A.P. 5.

This Court writes to express to the bench and bar that we adhere to federal policy favoring arbitration and that arbitration agreements are not per se inherently unconscionable.

However, where as here, an arbitration agreement is found to be unconscionable pursuant to general state law principles, then it may be invalidated without offending the Federal Arbitration Act. ***Doctor's Assocs., Inc. v. Casarotto,*** 517 U.S. 681, 686, 116 S. Ct. 1652, 1655, 134 L. Ed. 2d 902 (1996)(quoting 9.U.S.C. § 2).

We find that the circuit court was correct in holding the arbitration clause unconscionable in this case, and we therefore affirm and remand to the circuit court for a full trial on the merits.

FACTS

Relying on the salesman's statement that the truck was "new" and had never been titled, on May 10, 1999, James E. Taylor, Jr. purchased a 1998 Ford F-150 pickup truck from East Ford, Inc. for $ 22,051.77. Taylor completed the transaction by signing several forms, including an "Offer to Purchase or Lease Vehicle." That agreement provided in pertinent part as follows:

> B. ARBITRATION AGREEMENT: With only the exceptions described below, the parties acknowledge, understand and agree that: (1) any controversy, claim, action or inaction arising out of, or relating to, the transaction evidenced by the OFFER together with any resulting written agreements including, but not being limited to, any finance, lease, insurance and/or vehicle service agreements (the OFFER and all resulting agreements are hereinafter collectively referred to as the "AGREEMENTS"), or any breach thereof, together with any repair or service to the vehicle performed or provided by [East Ford, Inc.], shall be settled by arbitration administered by

the American Arbitration Association in accordance with its Commercial Arbitration Rules; and (2) judgment of the award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction; and (3) the arbitration proceeding shall be conducted in Jackson, Mississippi; and (4) the arbitrator(s) will have no authority to award punitive damages and may not in any event, make any ruling, finding, or award that does not conform to the terms and conditions of the AGREEMENTS; and (5) the AGREEMENTS evidence a transaction involving interstate commerce; and (6) the Federal Arbitration Act, 9 U.S.C. § § 1, et seq. (1947, as amended) shall govern the interpretation and enforcement of this Arbitration Agreement; and (7) the only claims which may arise among the parties which are not subject to this Arbitration Agreement are: (a) claims by [East Ford, Inc.] (including its agents, successors and assigns) that one or more events of default as identified in the AGREEMENTS has occurred on the part of OFFEROR(S) (such claims include, but are not limited to, OFFEROR(S) failure to make payments in compliance with the AGREEMENTS)--the parties agree

> that all such claims may be pursued in any court of competent jurisdiction; and (b) claims subject to the Arbitration Agreement; and (8) the parties' respective rights and obligations under this Arbitration Agreement will survive the breach, sale, assignment, cancellation, termination, revocation, expiration, novation and/or modification of any or all the AGREEMENTS.

After buying the truck, Taylor discovered that it was not in fact new, but rather that it had been previously titled to another person. When confronted by Taylor, East Ford's representative initially denied that the truck was sold as new, but when presented with a bill of sale which reflected the truck was sold as new, East Ford merely issued an amended bill of sale which reflected the truck was sold as used. Taylor's expert provided an affidavit in which he stated that the difference in cost between a new truck and the used one is $ 6,676.77. Taylor subsequently filed suit against East Ford in the Hinds County Circuit Court alleging common law fraud, breach of contract and breach of express warranty. East Ford filed a Motion to Compel Arbitration asserting that Taylor was required to arbitrate the dispute. In response to East Ford's motion, Taylor filed several affidavits, including his own.

In his affidavit, Taylor states that he signed the Offer to Purchase or Lease Vehicle without being advised of the arbitration agreement. He asserts that he has had no legal

training and that he did not wilfully agree to arbitration. He further alleges that the agreement was not discussed with him. An affidavit provided by the salesman, Bryan Childress, confirms not only that he did not discuss the arbitration agreement with Taylor, but also that Childress had no knowledge that an arbitration agreement was part of the transaction between East Ford and Taylor. Childress's affidavit further states that he had never discussed an arbitration agreement with any of the customers to whom he has sold vehicles, nor had he ever been given any information regarding such an agreement by East Ford.

The circuit court found the arbitration clause to be unconscionable and, therefore, denied East Ford's Motion to Compel Arbitration. East Ford then filed a Petition for Interlocutory Appeal with this Court, which we subsequently granted.

STANDARD OF REVIEW

The grant or denial of a motion to compel arbitration is reviewed de novo. *Webb v. Investacorp, Inc.*, 89 F.3d 252, 256 (5th Cir. 1996). In determining the validity of a motion to compel arbitration under the Federal Arbitration Act, courts generally conduct a two-pronged inquiry. The first prong has two considerations: (1) whether there is a valid arbitration agreement and (2) whether the parties' dispute is within the scope of the arbitration agreement.

In the present case, the outcome of the first prong is not disputed. Under the second prong, the United States Supreme Court has stated the question is "whether legal constraints external to the parties' agreement foreclosed

arbitration of those claims." ***Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.***, 473 U.S. 614, 626, 105 S. Ct. 3346, 87 L. Ed. 2d 444 (1985) (citations omitted). Under the second prong, applicable contract defenses available under state contract law such as fraud, duress, and unconscionability may be asserted to invalidate the arbitration agreement without offending the Federal Arbitration Act. **Doctor's Assocs., Inc. v. Casarotto**, 517 U.S. 681, 686, 116 S. Ct. 1652, 134 L. Ed. 2d 902 (1996).

ANALYSIS

I. WHETHER THE ARBITRATION CLAUSE IS UNCONSCIONABLE.

The Federal Arbitration Act provides that arbitration agreements "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. The Act establishes a "'federal policy favoring arbitration,'...requiring that 'we rigorously enforce agreements to arbitrate.'" ***Shearson/Am. Exp., Inc. v. McMahon***, 482 U.S. 220, 226, 107 S. Ct. 2332, 2337, 96 L. Ed. 2d 185 (1987) (citations omitted). "Absent a well-founded claim that an arbitration agreement resulted from the sort of fraud or excessive economic power that 'would provide grounds for the revocation of any contract,' the Arbitration Act 'provides no basis for disfavoring agreements to arbitrate statutory claims by skewing the otherwise hospitable inquiry into arbitrability.'" ***Id.*** (citations omitted). "Questions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration...The Arbitration Act establishes that, as a matter of federal law, any doubts

concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability." ***Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.***, 460 U.S. 1, 24-25, 103 S. Ct. 927, 74 L. Ed. 2d 765 (1983). This Court has adopted this preference for arbitration. ***See Smith Barney, Inc. v. Henry***, 775 So. 2d 722 (Miss. 2001); ***I.P. Timberlands Operating Co. v. Denmiss Corp.***, 726 So. 2d 96, 103-04 (Miss. 1998); ***Hutto v. Jordan***, 204 Miss. 30, 36 So. 2d 809, 812 (1948).

It has been recognized that in order to determine whether legal constraints exist which would preclude arbitration, "courts generally . . . should apply ordinary state-law principles that govern the formation of contracts." ***Bank One, N.A. v. Coates,*** 125 F. Supp. 2d 819, 827 (S.D. Miss. 2001) (quoting ***Webb v. Investacorp, Inc.***, 89 F.3d 252, 257 (5th Cir. 1996)). However, "courts may not . . . . . invalidate arbitration agreements under state laws applicable *only* to arbitration provisions." ***Doctor's Assocs., Inc. v. Casarotto***, 517 U.S. at 687, 116 S. Ct. at 1655 (quoting ***Allied-Bruce Terminix Cos. v. Dobson***, 513 U.S. 265, 281, 115 S. Ct., 834, 843, 130 L. Ed. 2d 753 (1995); ***Perry v. Thomas***, 482 U.S. 483, 492 n.9, 107 S. Ct. 2520, 2527 n.9, 96 L. Ed. 2d 426 (1987)). In other words, the usual defenses to a contract such as fraud, unconscionability, duress, and lack of consideration may be applied to invalidate an arbitration agreement, so long as the law under which the provision is invalidated is not applicable only to arbitration provisions. It was under this prong that the trial court found the arbitration agreement to be unconscionable.

The courts have recognized "two types of unconscionability, procedural and substantive." ***Pridgen v. Green Tree Fin. Servicing Corp.***, 88 F. Supp. 2d 655 (S.D. Miss. 2000) (quoting ***York v. Georgia-Pac. Corp.***, 585 F. Supp. 1265, 1278 (N.D. Miss.1984)). Procedural unconscionability may be proved by showing "a lack of knowledge, lack of voluntariness, inconspicuous print, the use of complex legalistic language, disparity in sophistication or bargaining power of the parties and/or a lack of opportunity to study the contract and inquire about the contract terms." ***Id.***

Substantive unconscionability may be proven by showing the terms of the arbitration agreement to be oppressive. ***York***, 585 F. Supp. at 1278. Substantively unconscionable clauses have been held to include waiver of choice of forum and waiver of certain remedies. In the present case, Taylor argues that the provision is both procedurally and substantively unconscionable. First Taylor argues that the arbitration provision is procedurally unconscionable because although he signed the provision, he did not read it because the salesman did not tell him that he should. Taylor alleges that at the time he signed the contract, he did not know what arbitration was or that he was agreeing to submit to it. Taylor further argues that the location and the typeset of the terms of the agreement render it unconscionable. East Ford argues that none of these factors render the agreement procedurally unconscionable.

Taylor further argues that the arbitration provision is substantively unconscionable because, under the terms of the agreement, only he is required to arbitrate while East Ford retains the right to pursue most, if not all, of its claims against

Taylor in a court of law. Furthermore, Taylor points out, that his remedy is limited to actual damages because the arbitration provision prevents an award of punitive damages no matter how egregious the conduct on the part of East Ford might be. East Ford argues that the foregoing reasons are insufficient to find the arbitration clause substantively unconscionable.

In the case below, the circuit court found the arbitration clause to be both procedurally and substantively unconscionable. The circuit court found in relevant part:

> In the present case, it is clear that an arbitration agreement between Plaintiff and Defendant existed. It is not so clear as to whether the arbitration agreement is enforceable. By reviewing the Offer to Purchase or Lease Vehicle agreement, it is noticeable that certain words are in boldface, large letters which stand out conspicuously to the reader. Defendant states in the Motion to Compel Arbitration that the arbitration agreement appears in bold type. Yet, the Court could not discern any bold printing. The arbitration clause is not in boldface and it appears less than one third the size of many other terms in the document. As a matter of fact, every detail that is inserted onto the agreement concerning the vehicle Plaintiff purchases is in boldface print. However, the arbitration clause along with the additional terms and status and compensation clause are all in very fine print and regular typing font.

Defendant also states that the arbitration clause is outlined and separated from the remainder of the Offer to Purchase or Lease Vehicle Agreement. From the Courts [sic] examination of the document, the arbitration clause is enclosed in a box setting along with additional terms and status of and compensation clause. The box setting format is used in other parts of the agreement as well. The arbitration clause also does not have any underlining nor any other effect which would alert the reader of the importance of its terms.

Furthermore, the arbitration clause is clearly one-sided. The agreement is a standard, preprinted form unilaterally drafted by East Ford, Inc. The administers of the arbitration agreement, the American Arbitration Association, do not have any authority to award punitive damages. The arbitration clause also states that the only claims which may arise among the parties which are not subject to this arbitration agreement are claims by East Ford, Inc. and those subject to Lemon Law Rights. Even if the consumer proceeds to file a grievance under the Lemon Law, the consumer must first seek resolution before the Dispute Settlement Board. Thus, East Ford is unilaterally allowed to rescind the entire agreement. The only instance where the consumer is allowed to rescind the arbitration agreement is in the purchase of a lemon. East Ford, Inc. has an

> unfair advantage. Therefore, the arbitration clause in the Offer to Purchase or Lease Vehicle agreement will not be enforced because it is unconscionable both procedurally and substantively.

In ***Entergy Miss., Inc. v. Burdette Gin Co.***, 726 So. 2d 1202 (Miss. 1998), this Court examined unconscionability.

> Unconscionability has been defined as "an absence of meaningful choice on the part of one of the parties, together with contract terms which are unreasonably favorable to the other party." To show that a provision is conscionable, the party seeking to uphold the provision must show that the provision bears some reasonable relationship to the risks and needs of the business.

Bank of Indiana, Nat'l Ass'n v. Holyfield, 476 F. Supp. 104, 109 (S.D. Miss.1979) (citations omitted). "In ***Terre Haute Cooperage v. Branscome***, 203 Miss. 493, 35 So. 2d 537 (1948), this Court defined an unconscionable contract as '... one such as no man in his senses and not under a delusion would make on the one hand, and as no honest and fair man would accept on the other....' " ***In re Will of Johnson***, 351 So. 2d 1339, 1341 (Miss.1977).

Entergy Miss., Inc., 726 So. 2d at 1207.

We went on to discuss procedural unconscionability:

> The indicators of procedural unconscionability generally fall into two areas: (1) lack of knowledge, and (2) lack of voluntariness. A lack of knowledge is demonstrated by a lack of understanding of the contract terms arising from inconspicuous print or the use of complex, legalistic language, disparity in sophistication of parties, and lack of opportunity to study the contract and inquire about contract terms. A lack of voluntariness is demonstrated in contracts of adhesion when there is a great imbalance in the parties' relative bargaining power, the stronger party's terms are unnegotiable, and the weaker party is prevented by market factors, timing or other pressures from being able to contract with another party on more favorable terms or to refrain from contracting at all.

Holyfield, 476 F. Supp. at 109-10 (citations omitted).

Entergy Miss., Inc., 726 So. 2d at 1207.

We further found in relevant part:

> Procedural unconscionability "is most strongly shown in contracts of adhesion presented to a party on a 'take it or leave it basis.'" ***York***, 585 F. Supp. at 1278 (quoting ***Holyfield***, 476 F. Supp. at 108).

Entergy Miss., Inc., 726 So. 2d at 1207-08.

A contract of adhesion has been described as one that is "drafted unilaterally by the dominant party and then presented on a 'take-it-or-leave-it' basis to the weaker party who has no real opportunity to bargain about its terms. Such contracts are usually prepared in printed form, and frequently at least some of their provisions are in extremely small print." ***Bank of Indiana, Nat'l Ass'n v. Holyfield***, 476 F. Supp. 104, 108 (S.D. Miss.1979) (quoting Restatement 2d, Conflicts, § 203, Comment b). As the Fifth Circuit has held, "contracts in which one party has minimal bargaining power, also referred to as contracts of adhesion, ***are not automatically void.*** *" See* ***Hughes Training, Inc. v. Cook***, 254 F.3d 588, 593 (5th Cir. 2001) (emphasis added) (citing ***Dillard v. Merrill Lynch, Pierce, Fenner & Smith, Inc.***, 961 F.2d 1148, 1154 (5th Cir. 1992)). Similarly, arbitration agreements are not inherently unconscionable. ***Bank One, N.A. v. Coates***, 125 F. Supp. 2d 819, 830 (S.D. Miss. 2001) (citing ***Smith v. EquiFirst Corp.***, 117 F. Supp. 2d 557, 564 (S.D. Miss. 2000)). The fact that an arbitration agreement is included in a contract of adhesion renders the agreement procedurally unconscionable only where the stronger party's terms are unnegotiable and "the weaker party is prevented by market factors, timing or other pressures from being able to contract with another party on more favorable terms or to refrain from contracting at all." ***Entergy Miss., Inc.*** , 726 So. 2d at 1207 (quoting ***Bank of Indiana, Nat'l Ass'n v. Holyfield***, 476 F. Supp. at 109-10). While ***Burdette*** concluded that an indemnity clause within a contract of adhesion is presumptively unconscionable, the same is not true for arbitration clauses. ***Burdette*** involved an agreement to indemnify, which essentially allows a party to contract

away or escape liability. Arbitration agreements merely submit the question of liability to another forum - generally speaking, they do not waive liability. Furthermore, Congress has expressed no federal interest in enforcing indemnification agreements as it has in guaranteeing the enforcement of valid arbitration agreements. *See* Federal Arbitration Act, 9 U.S.C. § § 1 et seq. As noted, "questions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration," with any doubt concerning the scope of the agreement resolved in favor of arbitration. ***Bank One*** , 125 F. Supp. 2d at 827 (quoting ***Moses H. Cone Mem'l Hosp. v. Mercury Constr. Co.***, 460 U.S. at 24-25).

As previously stated, the circuit court found in the present case that the arbitration provision appears less than one-third the size of many other terms in the document, appears in very fine print and regular type font. The circuit court further observed that all of the details concerning the vehicle Taylor purchased are in boldface print, while the arbitration provision is not. Additionally, the arbitration provision is preprinted on the document. Taking all of the foregoing into consideration, we find the arbitration clause in this case is procedurally unconscionable.

Although raised by Taylor below, the circuit court did not address Taylor's lack of consideration argument. Because we find that the arbitration clause in this case is procedurally unconscionable, we find it unnecessary to address Taylor's lack of consideration argument, as well as his arguments regarding substantive unconscionability.

CONCLUSION

Federal law favors arbitration as is evident from the existence of the Federal Arbitration Act. In disputes in commercial settings we have held that "articles of agreement to arbitrate, and awards thereon are to be liberally construed so as to encourage the settlement of disputes and the prevention of litigation, and every reasonable presumption will be indulged in favor of the validity of arbitration proceedings." ***IP Timberlands Operating Co. v. Denmiss Corp.***, 726 So. 2d 96, 108 (Miss. 1998) (quoting ***United Steelworkers v. Am. Mfg. Co.***, 363 U.S. 564, 567, 80 S. Ct. 1343, 4 L. Ed. 2d 1403 (1960)). However, where an arbitration agreement is found to be unconscionable pursuant to general state law principles, as is the case here, then the arbitration provision may be invalidated without offending the Federal Arbitration Act. ***Doctor's Assocs., Inc. v. Casarotto***, 517 U.S. at 686, 116 S. Ct. at 1655 (quoting 9 U.S.C. § 2). Therefore, we affirm the judgment of the circuit court and remand this case for a full trial on the merits.

AFFIRMED AND REMANDED.

PITTMAN, C.J., WALLER, COBB AND CARLSON, JJ., CONCUR. EASLEY, J., CONCURS IN RESULT ONLY. DIAZ, J., CONCURS IN PART. McRAE, P.J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY DIAZ, J. GRAVES, J., NOT PARTICIPATING.

McRAE, PRESIDING JUSTICE, DISSENTING:

I dissent to the majority's announcing that it favors pre-disposition arbitration and adhesion contracts. It is difficult to knowingly and intelligently waive a trial by jury and an arbitration clause in pre-disposition arbitration because the consumer does not actually know what is involved in giving up their rights. For the majority to say that "arbitration agreements merely submit the question of liability to another forum" is disingenuous because arbitration does not allow for the following by a court of law or review, generally punitive damages or discovery, subpoena of witnesses out of state or in state, or some form of damages. It is merely a cost or expense matter.

While I agree that in some commercial settings arbitration should be allowed as illustrated in ***IP Timberlands Operating Co. v. Denmiss Corp.***, 726 So. 2d 96, 103 (Miss. 1998), arbitration clauses in most consumer contracts involve overreaching, unconscionability, and precluding small business and individuals from pursuing a remedy when wronged via trial by jury which is guaranteed by our Constitution.

Under the Federal Arbitration Act, automobile dealers were being required to arbitrate any disputes with automobile manufacturers until Congress had to step in and pass a law that released dealers from the strictures of arbitration. See 15 U.S.C. § 1222 (1997). By the same token, individuals and small businesses should be afforded the same rights.

Article 3, Section 24 of the Mississippi Constitution of 1890 provides that for every injury there shall be a remedy:

> All courts shall be open; and every person for an injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law, and right and justice shall be administered without sale, denial, or delay.

Article 3, Section 25 of the Mississippi Constitution of 1890 provides that the courts shall be open to all people:

> No person shall be debarred from prosecuting or defending any civil cause for or against him or herself, before any tribunal in the state, by him or herself, or counsel, or both.

Finally Article 3, Section 31 provides:

> The right of trial by jury shall remain inviolate, but the legislature may, by enactment, provide that in all civil suits tried in the circuit and chancery court, nine or more jurors may agree on the verdict and return it as the verdict of the jury.

The arbitration clause in the present case clearly forecloses Taylor's constitutional right to a jury trial, as well as his constitutional right to have a judicial remedy for any wrong which he may have suffered at the hands of East Ford. In addition, the clause waives Taylor's right to collect punitive damages against East Ford. This Court has held, "clauses limiting liability are given rigid scrutiny by the courts, and will not be enforced unless the limitation is fairly and honestly negotiated and understandingly entered into." ***Farragut v. Massey***, 612 So. 2d 325, 330 (Miss. 1992)

(quoting 17 Am.Jur.2d *Contracts* § 297, at 298 n. 74 (1991)). ***See also Quinn v. Miss. State Univ.***, 720 So. 2d 843, 851 (Miss. 1998). In the present case, it is clear that the arbitration clause was anything but fairly and honestly negotiated and that Taylor did not understandingly enter into the arbitration clause which severely limits his legal rights. Furthermore, the salesperson did not know or understand the arbitration clause.

In ***Iwen v. U.S. West Direct***, 1999 MT 63, 977 P.2d 989, 293 Mont. 512 (Mont. 1997), the court found an arbitration provision in a telephone directory advertisement contract to be unconscionable, and in so doing stated:

> Drafted as such, the weaker bargaining party has no choice but to settle all claims arising out of the contract through final and binding arbitration, whereas the more powerful bargaining party and drafter has the unilateral right to settle a dispute for collection of fees pursuant to the agreement in a court of law. . . .U.S. West Direct pointedly protected itself by preserving its constitutional right of access to the judicial system while at the same time completely removed that right from the advertiser.

Id. at 995-96. The court went on to hold:

> [T]his case presents a clear example of an arbitration provision that lacks mutuality of obligation, is one-sided, and contains terms

> that are unreasonably favorable to the drafter. Because U.S. West Direct presented this agreement on a take-it-or-leave-it basis, it is also a contract in which there was no meaningful choice on the part of the weaker bargaining party regarding acceptance of the provisions. Certainly, this does not mean arbitration agreements must contain mutual promises that give the parties identical rights and obligations, or that the parties must be bound in the exact same manner. This simply restates the rule of law that disparities in the rights of the contracting parties must not be so one-sided and unreasonably favorable to the drafter, as they are in this case, that the agreement becomes unconscionable and oppressive.

Id. at 996.

In the case at bar, the arbitration provision waives Taylor's constitutional right to a jury trial, his right to collect punitive damages from East Ford, and effectively forecloses his right to access to the courts of Mississippi guaranteed by the Constitution of the State of Mississippi, while at the same time preserving East Ford's right to pursue legal action against Taylor in the courts of Mississippi in most of the situations. As such, the arbitration clause lacks mutuality of obligation because it is so one-sided and unreasonably favorable to East Ford, which drafted the provision, that it is unconscionable and oppressive. "Courts, while zealous to uphold legal contracts, should not sacrifice the spirit to the letter nor should they be slow to aid the confiding and

innocent." ***United States Fid. & Guar. Co. v. Ferguson***, 698 So. 2d 77, 80 (Miss. 1997) (quoting ***Andrew Jackson Life Ins. Co. v. Williams***, 566 So. 2d 1172, 1188-89 (Miss.1990) (citations omitted)).

Accordingly, I dissent as to the majority's reasoning but concur in the affirmance of the circuit court's order denying arbitration and in the remand of this case for a full trial on merits.

DIAZ, J., JOINS THIS OPINION.

APPENDIX C

MANDATE
SUPREME COURT OF MISSISSIPPI

October 10, 2002

To the Hinds County Circuit Court 1st Judicial District - GREETINGS:

In proceedings held in the Courtroom, Carroll Gartin Justice Building, in the City of Jackson, Mississippi, in Supreme Court of Mississippi entered a judgment as follows:

Supreme Court Case # 2000-IA-01527-SCT
Trial Court Case # 251-00278CIV

East Ford, Inc. v. James E. Taylor, Jr.

Thursday, 18th day of July, 2002
Affirmed and Remanded. Appellant taxed with costs of appeal.

Thursday, 3rd day of October, 2002
The motion for rehearing filed by appellant is denied. Graves, J., not participating.

YOU ARE COMMANDED, that execution and further proceedings as may be appropriate forthwith be had consistent with this judgment and the Constitution and Laws of the State of Mississippi.

I, Betty W. Sephton, Clerk of the Supreme Court of Mississippi and the Court of Appeals of the State of Mississippi, certify that the above judgment is a true and correct copy of the original which is authorized by law to be filed and is actually on file in my office under my custody and control.

Witness my signature and the Court's seal on October 10, 2002, A.D.

/s/ Betty W. Sephton
CLERK

APPENDIX D

EAST FORD
OFFER TO PURCHASE
OR LEASE VEHICLE

May 10, 1999

Fold-Out Exhibit

Fold-Out Exhibit 1 of 2

EAST FORD

JACKSON, MISSISSIPPI

OFFER TO PURCHASE OR LEASE VEHICLE

3940 U.S. Highway 80 West
Jackson, MS 39209
Telephone: 601-922-3311
E-mail: efi@eastford.com
www.eastford.com

Date 05/10/1999 ( ) New Car ( ) New Truck ( ) Used Vehicle

Source _____

Stock Number 98T1011

Offeror's
FULL NAME JAMES E TAYLOR JR

HM. Phone (601)671-9764

WK. Phone (601)371-5665

Address 1859 MOLE STAGE SLOCK RD

Salesman CHILDRESS, BRYAN

City PICKENS County YAZOO State MS Zip 39146

Enter My Order for	YR.	Make	Model	Color
	1998	FORD	F150	BLUE

VIN# 1FTZF172[illegible]W[illegible]

CYL. 6 Miles 628

SA# FB#

TRADE INFORMATION 359-1125

Make PONTIAC Cyl. 6

Model GRAND PRIX Dr. Year 1995

VIN# 1G2WK52M[illegible]F276665

Miles 199128 Excess of 100,000 Color WHITE

Lienholder Name BANKPLUS

Address

Account # Phone No.

Payoff Amount Good Till Date (10 Days)

10948.23

Upon verification, OFFEROR(S) agrees to pay all amounts due on the trade-in exceeding the payoff amount.

Additional Accessories:

A. ADDITIONAL TERMS, CONDITIONS, DISCLOSURES, AGREEMENTS AND ACKNOWLEDGEMENTS: Each of the undersigned for themselves, their heirs and assigns forever (hereinafter "OFFEROR(S)") acknowledge and agree that the terms, conditions and disclosures set forth on this side of this document and in paragraphs 1-8, inclusive, on the reverse side of this document have been read and understood by us and form a material part of the basis of the OFFEROR(S)'s offer to purchase or lease the identified vehicle (hereinafter "VEHICLE") from East Ford, Inc., its agents, successors and assigns (hereinafter collectively referred to as "EFI") as set forth on both sides of this document (hereinafter "OFFER"). The parties have negotiated the offered transaction in reliance on all the terms, representations and disclosures including all pre-printed terms on both sides of this document, including the Arbitration Agreement set forth below. OFFEROR(S) acknowledge and agree that they have been advised and understand that if they object to arbitration as set forth below, EFI is willing to re-negotiate the terms of the offered transaction by striking or amending the Arbitration Agreement and adjusting for and/or taking into account the additional risks and costs associated with traditional judicial proceedings.

B. ARBITRATION AGREEMENT: With only the exceptions described below, the parties acknowledge, understand and agree that: (1) any controversy, claim, action or inaction arising out of, or relating to, the transaction evidenced by the OFFER together with any resulting written agreements including, but not being limited to, any finance, lease, insurance and/or vehicle service agreements (the OFFER and all resulting agreements are hereinafter collectively referred to as the "AGREEMENTS"), or any breach thereof, together with any repair or service to the vehicle performed or provided by EFI, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules; and (2) judgment on the award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction; and (3) the arbitration proceeding shall be conducted in Jackson, Mississippi; and (4) the arbitrator(s) will have no authority to award punitive damages or any other damages not measured by the prevailing party(ies)'s actual damages and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of the AGREEMENTS; and (5) the AGREEMENTS evidence a transaction involving interstate commerce; and (6) the Federal Arbitration Act, 9 U.S.C. §§ 1, et seq. (1947, as amended) shall govern the interpretation and enforcement of this Arbitration Agreement; and (7) the only claims which may arise among the parties which are not subject to this Arbitration Agreement are: (a) claims by EFI (including its agents, successors and assigns) that one or more events of default as identified in the AGREEMENTS has occurred on the part of OFFEROR(S) (such claims include, but are not limited to, OFFEROR(S)'s failure to make payments in compliance with the AGREEMENTS)—the parties agree that all such claims may be pursued in any court of competent jurisdiction; and (b) claims subject to paragraph 8 (on reverse)—the parties agree that pursuit of any statutory remedies will be pursuant to this Arbitration Agreement; and (8) the parties' respective rights and obligations under this Arbitration Agreement will survive the breach, sale, assignment, cancellation, termination, revocation, expiration, novation and/or modification of any or all of the AGREEMENTS.

C. STATUS OF AND COMPENSATION TO EAST FORD, INC.: In addition to being the seller or lessor in the offered transaction, EFI may be selling you the products or services of one or more insurance companies, financing and/or leasing sources, vehicle service agreement or extended warranty administrators or providers and other products and services of other companies and/or of itself. If EFI sells you any such products or services, it will receive a profit, commission, fee and/or other compensation for selling you such products or services. Any such profits, commissions, fees or other compensation will be in addition to any profits and fees made on the VEHICLE.

D. Each of the undersigned is a licensed driver and is at least 18 years of age. This is a legally binding agreement with additional terms on the reverse. Do not sign if you have any questions or objections.

Offeror(s) signature(s)

IMPORTANT ADDITIONAL TERMS & CONDI

SS# _____ Date _____

PRICE Same Price Cash or Credit		
Trade Allowance		21424.59
Difference		12000.00
Documentary Fee* (Add to Price)		9424.59 139 00
Sales Tax		
Title & Inspection Fee		478.18 10 00
TOTAL BALANCE		
Down Payment Rec. #		10051.77
Cash on Delivery Rec. #		N/A
Sub Total		N/A
Trade **PAY-OFF**		10051.77
Extended Service Plan		10948.23
TOTAL		N/A

* This fee is neither an official fee nor required by law and is taxed as a part of the purchase price.

LENDER INFORMATION:

Phone: _____

Name BANKPLUS

Address P.O. BOX 1087

City YAZOO CITY State MS Zip 39194

Approved by East Ford Inc.

© 1998 East Ford, Inc.

BEST AVAILABLE COPY

Fold-Out Exhibit 2 of 2

ADDITIONAL TERMS, CONDITIONS, DISCLOSURES, AGREEMENTS AND ACKNOWLEDGEMENTS

1. OFFEROR(S) represent, warrant and agree that (a) all representations by OFFEROR(S) are true and correct as of the date of this instrument; and (b) all oral agreements, representations and statements by and between the parties regarding the VEHICLE and the AGREEMENTS are canceled by, superseded by, and merged into, such written documents which are signed the party(ies) against whom enforcement may be sought; and (c) OFFEROR(S) were never quoted a price or capitalized cost for the VEHICLE lower than that set forth in the AGREEMENTS; and (d) the price or capitalized cost for the VEHICLE was not increased or changed in any way because EFI assisted OFFEROR(S) in obtaining the financing for the purchase or lease of the VEHICLE; and (e) that EFI is engaged in all aspects of this transaction to provide products and services to make a profit, and (f) EFI is not acting as the representative, fiduciary or agent of OFFEROR(S) for any reason whatsoever in connection with the AGREEMENTS.

2. Subject to the provisions of paragraph 5 below, the OFFER will not be binding on EFI unless and until it is accepted by an employee of EFI who is authorized by EFI to do so. If OFFEROR(S) take possession of the VEHICLE pursuant to the OFFER, OFFEROR(S) will be deemed to have accepted the terms of the OFFER.

3. The VEHICLE may have suffered damages and may have had repairs performed on it during prior ownership or usage, during transit or while in the control or possession of EFI. It is acknowledged that the VEHICLE has been inspected in accordance with the law, and that it has been test driven and fully inspected by OFFEROR(S) and all others requested or desired by OFFEROR(S) to do so. The VEHICLE is fully acceptable to OFFEROR(S) in its present body and mechanical condition—AS IS. EFI has no obligation to furnish any loaner car to OFFEROR(S) or to provide any other substitute transportation to OFFEROR(S) for any reason.

4. OFFEROR(S) hereby sell and convey to EFI the trade-in vehicle described on the reverse side hereof, if any. OFFEROR(S) are the sole owner(s) of such vehicle, and OFFEROR(S) warrant that the title to such trade-in vehicle is free and clear of all liens and encumbrances except those fully and correctly noted on the reverse side of this document. OFFEROR(S) further warrant that the mileage of such trade-in vehicle as indicated on the reverse hereof is fully and accurately disclosed; and, unless fully disclosed in writing on the reverse hereof, that such trade-in vehicle has not been wrecked, damaged or rebuilt, and that it does not have a salvaged or reconstructed title.

5. If any portion of the amount of the OFFER is not paid in cash by OFFEROR(S) directly to EFI at the time of delivery of the VEHICLE:

(A) OFFEROR(S) authorize EFI, in EFI's sole discretion, to investigate OFFEROR(S)'s credit and employment history, to obtain and use credit reports from credit report furnishers, and to furnish and reveal such information to others; and

(B) OFFEROR(S) agree and acknowledge that, in addition to any events of default by them as set forth in the OFFER or any of the AGREEMENTS, OFFEROR(S) will be in default thereof if any of them provides false or misleading material information on a credit application or other documents related to and including the OFFER and any of the AGREEMENTS; and

(C) OFFEROR(S) understand and agree that, if a financing or lease purchasing company is not obtained to purchase or fund the finance or lease contract on the VEHICLE on terms which are acceptable to EFI, in EFI's sole discretion, then OFFEROR(S) will immediately (within 24 hours) upon notice from EFI either (1) return the VEHICLE to EFI and pay to EFI the amounts set forth in paragraph (6) below, or (2) if the OFFER is to purchase, retain the VEHICLE and pay to EFI the amount of the deferred balance in the OFFER in cash or on other terms which are acceptable to EFI, in EFI's sole discretion; and

(D) OFFEROR(S) understand and agree that EFI, in EFI's sole discretion, may revoke its acceptance of the OFFER and repossess the VEHICLE or exercise any other legal remedy available to it at any time (1) if the OFFER is to lease, until the lease agreement is purchased or funded by a lease purchasing company on terms which are acceptable to EFI, in EFI's sole discretion, or (2) if the OFFER is to purchase, until the deferred balance in the OFFER is paid to EFI by OFFEROR(S) in cash or on other terms acceptable to EFI, in its sole discretion; and

(E) OFFEROR(S) understand and agree that they will have to truthfully meet and satisfy all the terms, conditions, stipulations and requirements of EFI or any finance company or lease purchasing company obtained by and/or acceptable to EFI, in EFI's sole discretion, and that OFFEROR(S) will submit all such information and documentation immediately (within 24 hours) on request, and that failing to do so will constitute an event of default under the AGREEMENTS; and

(F) OFFEROR(S) understand and agree that, if EFI assists OFFEROR(S) in obtaining financing for the purchase or lease of the VEHICLE, EFI, in its sole discretion, may sell or assign some or all its rights under such financing or leasing contract on such terms which are acceptable to EFI from time to time; such terms may include, but not be limited to, (1) EFI receiving compensation from such purchaser in several ways including the receipt by EFI of a portion of the interest or lease charges you agree to pay and/or (2) EFI paying a fee and/or discount in varying substantial amounts to such purchaser.

6. OFFEROR(S) understand and agree that if EFI revokes its acceptance of the OFFER, or if one or more events of default as identified in the AGREEMENTS has occurred on the part of OFFEROR(S), or if financing of any deferred balance in the OFFER is not obtained on terms which are acceptable to EFI, in its sole discretion; then OFFEROR(S) agree to pay to EFI $200 as liquidated damages, plus the cost of repair of any damage or mechanical failure occurring to the VEHICLE plus twenty cents ($.20) for each mile the VEHICLE has been driven from and including the date OFFEROR(S) took possession of the VEHICLE, plus a $50.00 restocking and clean up fee, plus any costs, fees and expenses incurred by EFI to obtain or retain possession of the VEHICLE and any trade-in vehicle; and

7. Any and all express warranties by the manufacturer or supplier are theirs, and not those of EFI, unless otherwise provided in a writing signed by EFI—Mississippi's laws regarding implied warranties may provide additional rights. However, it is agreed and understood that if the VEHICLE is more than 6 model years old or has been driven more than 75,000 miles, then under Section 75-2-315 (1) of the Mississippi Code of 1972, as amended, all warranties of merchantability and of fitness for a particular purpose, regarding the VEHICLE are hereby excluded, and upon acceptance of the OFFER by EFI, the resulting purchase and sale or lease of the VEHICLE shall be AS IS and WHERE IS. In the event of an increase in price by the manufacturer or supplier of the VEHICLE (new vehicles only) prior to delivery of the VEHICLE pursuant to the OFFER, then the total price offered shall be increased by the amount of such manufacturer's price increase.

8. **LEMON LAW RIGHTS NOTIFICATION & ACKNOWLEDGMENT (NEW FORD MOTOR COMPANY VEHICLES ONLY). ATTENTION: MISSISSIPPI RESIDENTS**

In accordance with Mississippi law, you must seek resolution of your warranty problem through the Dispute Settlement Board prior to pursuing any replacement/refund remedies provided by Mississippi Statute 63-17-159.

IMPORTANT: IF YOUR NEW FORD MOTOR COMPANY PASSENGER CAR OR LIGHT TRUCK PURCHASED ON OR AFTER JULY 1, 1985 IS DEFECTIVE, AND CANNOT BE MADE TO CONFORM TO ITS APPLICABLE EXPRESS WARRANTY COVERAGE AFTER THREE REPAIR ATTEMPTS FOR SUBSTANTIALLY THE SAME DEFECT AND THE DEFECT CONTINUES TO EXIST, OR IT IS OUT OF SERVICE FOR MORE THAN 15 WORKING DAYS DURING THE PERIOD OF THE EXPRESS WARRANTY OR A PERIOD OF ONE YEAR FOLLOWING THE DATE OF ORIGINAL DELIVERY, WHICHEVER IS EARLIER, YOU MAY BE ENTITLED UNDER STATE LAW TO A REPLACEMENT OR TO A REFUND. YOU MUST FIRST NOTIFY THE MANUFACTURER OF THE PROBLEM IN WRITING AND PROVIDE THE MANUFACTURER AN OPPORTUNITY TO REPAIR THE VEHICLE. WRITTEN NOTIFICATION SHOULD BE SENT TO: CONSUMER AFFAIRS, P. O. BOX 43358, DETROIT, MI 48243.

To open a case with the Dispute Settlement Board, you must fill out an application. An explanatory brochure/application form is available at your dealership or by writing to:

Dispute Settlement Board
P.O. Box 5120
Southfield, MI 48086-5120

Ford Customer Service Division Regional Office:

Memphis Region
8000 Centerview Pkwy.
Suite 201
Cordova, TN 38018

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